DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 03-0482
Indiana Adjusted Gross Income Tax
For 2002

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ISSUES

I. Sufficiency of Taxpayer's Indiana Tax Return.

Authority: IC 6-3-1-3.5; Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003); Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-1; I.R.C. § 62.

Taxpayer maintains that he has fulfilled his obligation under state and federal law by filing federal and state income tax returns which are filled out with "zeroes."

II. Definition of "Income" for Purposes of Imposing the State's Individual Adjusted Gross Income Tax.

Authority: U.S. Const. amend. XIV; New York v. Graves, 300 U.S. 308 (1937); Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921); Doyle v. Mitchell, 247 U.S. 179 (1918); Eisner v. Macomber, 252 U.S 189 (1920); United States v. Connor, 898 F2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F2d 1328 (7th Cir. 1984); United States v. Romero, 640 F2d 1014 (9th Cir. 1981); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994); *Report of Committee on Ways and Means to Accompany HR. Res. 8300,* 83rd Cong. (1954); *Report of the Committee on Finance to Accompany H.R. Res. 8300,* 83rd Cong. (1954).

Taxpayer argues that the money he received during 2002 was not subject to the state's adjusted gross income tax because only corporate income is subject to income tax.

III. Voluntary Nature of Indiana's Adjusted Gross Income Tax.

Authority: IC 6-3-2-1(a); IC 6-8.1-11-2; Couch v. United States, 409 U.S. 322 (1975); Helvering v. Mitchell, 303 U.S. 391 (1938); United States v. Gerads, 999 F.2d

1255 (9th Cir. 1993); McLaughlin v. United States, 832 F.2d 986 (7th Cir. 1987); McKeown v. Ott, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985); Black's Law Dictionary (7th ed. 1999).

Taxpayer maintains that payment of income taxes is voluntary and that nowhere in the law is an individual made "liable" for the payment of income tax.

STATEMENT OF FACTS

Taxpayer filed a federal and a state income tax return for 2002. On both those returns, taxpayer filled in all of the entries with zeroes. Taxpayer attached a note to the Indiana return indicating that "This Return Is Not Filed Voluntarily." Also attached to the return was a W-2 form containing information indicating that taxpayer obtained "wages" during 2002. The Department of Revenue (Department) determined that taxpayer had incorrectly reported his 2002 income; thereafter, the Department sent notices of "Proposed Assessment" based on the information reported on the W-2 form. Taxpayer responded in writing challenging the Department's assessment. Additional correspondence between taxpayer and the Department followed; the upshot of the correspondence was that taxpayer eventually submitted a formal "protest" of the assessment. An administrative hearing was conducted during which taxpayer was provided an opportunity to explain the basis for his protest. This Letter of Findings results.

DISCUSSION

I. Sufficiency of Taxpayer's Indiana Tax Return.

Taxpayer maintains that he was not required to file an Indiana income tax return containing anything more than numerous "zeroes." According to taxpayer, because his corresponding federal return was also filled out with "zeroes," he was compelled by force of law to file his Indiana return as he did.

The Indiana tax return here at issue employs federal adjusted gross income as the starting point for determining the taxpayer's state individual income tax liability. Line one of the Indiana IT-40 form instructs the taxpayer to "Enter your federal adjusted gross income from your federal return (see page 10)."

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code) . . . ." Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department's own regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

> Adjusted Gross Income for Individuals Defined. For Individual, "Adjusted Gross Income" is Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:

(1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
(2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
(3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer's Indiana adjusted gross income.

Taxpayer's contention – that he was compelled by force of law to declare "0" as Indiana adjusted gross income because he declared "0" federal adjusted gross income – is patently without merit. The statute is plainly written and is unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62 not merely as reported by the taxpayer. *See* Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated directions for completing the form and not the means for determining the taxpayer's adjusted gross income. The Indiana tax form instructs the taxpayer to put what number in what box. However, the taxpayer must not only put *a* number in the box, he must put the *correct* number in the box. The directions on the tax form notwithstanding, taxpayer is nonetheless required to actually perform the calculations necessary to determine his liability for Indiana adjusted gross income tax.

The Indiana Tax Court addressed taxpayer's contention in Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003). "[I]t must be remembered that tax forms are used merely as an aid for taxpayers in calculating their taxable income in accordance with the income tax law. Therefore, calculating Indiana's adjusted gross income begins with federal taxable income as *defined* by Section 61(a) of the United States Code, not as what a taxpayer *reports* on its federal tax form." Eibeck 779 N.E.2d at 1214 n.6 (*Emphasis in original*).

FINDING

Taxpayer's protest is denied.

II. Definition of "Income" for Purposes of Imposing the State's Individual Adjusted Gross Income Tax.

Taxpayer maintains that only corporate profits are subject to either state or federal income tax. According to taxpayer, because he is not a corporation and did not receive corporate profits, any money which he received during 2002 is not subject to the state's income tax. In partial support of this contention, taxpayer cites to *Report of Committee on Ways and Means to Accompany HR. Res. 8300,* 83rd Cong. (1954) and to *Report of the Committee on Finance to Accompany H.R. Res. 8300,* 83rd Cong. (1954). The reports respectively indicate that the term "gross income" is "based upon the 16th Amendment and the word 'income' is used in its constitutional sense;" the second report states that the term "is based upon the sixteenth amendment and the word 'income is used . . . in its constitutional sense."

Taxpayer takes these committee reports to mean that the "gross income" – as defined in the Internal Revenue Code – refers to money received by corporations and that the Congress never intended "gross income" to include the sort of income and wages received by ordinary citizens. In arriving at this conclusion, taxpayer cites specifically to Merchants' Loan Trust Company v. Smietanka, 255 U.S. 509 (1921). In that case, the Court held that when a provision in a will created a trust, the increase of the value of the trust resulted in taxable "income" under the provisions of the U.S. Const. amend. XVI. Id. at 519. In arriving at that conclusion, the Court stated that "the word [income] must be given the same meaning and content in the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and that what that meaning is has now become definitely settled by decisions of [the] court." Id.

However, the case does not support taxpayer's contention that only corporate gain is subject to income tax. While the Court did conclude that the increase in the value of the trust resulted in taxable income, the Court never stated that only an increase in value or only corporate gain was subject to income tax. To the contrary, the court stated that, "Income may be defined as the gain derived from capital, *from labor*, or from both combined . . . ." Id at 518 (*Emphasis added*). *See also* Eisner v. Macomber, 252 U.S. 189 (1920); Doyle v. Mitchell, 247 U.S. 179, 207 (1918).

There is not a single court case which has ever held that the ordinary wages or the income received by everyday citizens is not subject to income tax. The United States Supreme has clearly stated that the wages of individual citizens may be subjected to an adjusted gross income tax. In New York v. Graves, 300 U.S. 308 (1937), Justice Stone stated "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized." Id. at 312.

Since that 1937 decision, the Federal courts have consistently, repeatedly, and without exception, determined that individual wages are income. United States v. Connor, 898 F.2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F.2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable") (Emphasis in original); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. . . . [Taxpayer] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves.").

In addressing the identical issue raised by taxpayer, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and Federal circuit courts, and this Court's opinion . . . all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State

Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer's contention is not well taken because there is not a single shred of evidence that Congress and the Indiana General Assembly did not fully intend to subject the wages of ordinary citizens to income tax or that they lacked the constitutional authority to do precisely that.

FINDING

Taxpayer's protest is denied.

III. Voluntary Nature of Indiana's Adjusted Gross Income Tax.

Taxpayer argues that whether or not he received taxable income is academic because payment of income tax is voluntary. In addition, taxpayer sets out a somewhat parallel argument to the effect that there is nothing in the income tax laws which makes him "liable" for federal or state income tax.

Taxpayer's "voluntary" argument is apparently in reference to IC 6-8.1-11-2 which states as follows:

> The general assembly makes the following findings: (3) The Indiana tax system is based largely on *voluntary compliance*. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve *voluntary compliance* and the relationship between the state and taxpayers. (*Emphasis added*).

Taxpayer's argument is without merit. In describing the nature of the federal tax system, the Court has stated that, "In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil." Helvering v. Mitchell, 303 U.S. 391, 399 (1938).

Taxpayer's basic contention – that Indiana depends on its citizens' voluntary compliance with the tax laws – is undeniable. Indeed, the state also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that failure to comply with the law is without predictable consequences. "Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary." United States v. Gerads, 999 F.2d 1255, 1256 (9th Cir. 1993). "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." McLaughlin v. United States, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law.*" McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985)

(*Emphasis Added*). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." Id. at *1.

The Supreme Court has stated that the government's entire tax system is "largely dependent upon honest self-reporting." Couch v. United States, 409 U.S. 322, 335 (1975). Taxpayer's bare assertion, that, based on the precatory language contained within IC 6-8.1-11-2, he no longer "volunteers" to pay income taxes and that it is sufficient to fill in his tax returns with numerous "zeroes," does not fall within any reasonable definition of "honest self-reporting."

Taxpayer's secondary argument – stating that there is nothing in the tax law which makes him liable for income tax – is also meritless. Taxpayer's argument is no more than an exercise in semantic word-games. IC 6-3-2-1(a) states that, "Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is *imposed* upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every non-resident person." (*Emphasis added*). The word "impose" means "to levy or exact a tax or duty." Black's Law Dictionary 759 (7th ed. 1999); "levy" means the "imposition of a fine or tax." Id. at 919. As a matter of law and simple common sense, whether a tax is levied or imposed, the person against whom the levy is made is "liable" for that amount.

FINDING

Taxpayer's protest is denied.

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